

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2001 CALIFORNIA BUILDING CODE (CBC)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2
(DISABLED ACCESS TO MULTISTORY DWELLINGS)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Department of Housing and Community Development (HCD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 2. HCD is proposing building standards related to disabled access to multistory dwellings contained in the 2001 edition of the California Building Code (CBC).

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 17, 2005 until 5:00 p.m. on August 1, 2005. Please address your comments to:

**California Building Standards Commission,
2525 Natomas Park Drive, Suite 130
Sacramento, California 95833
Attention: Stanley T. Nishimura, Executive Director**

Written comments may also be faxed to (916) 263-0959 or e-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are

made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Section 17921; and Government Code Sections 12955.1 and 12955.1.1. The Department is proposing this regulatory action based on Health and Safety Code Section 17921; and Government Code Section 12955.1.

INFORMATIVE DIGEST

Summary of Existing Laws

Existing laws govern accessibility requirements for persons with disabilities in specified dwelling units within covered multifamily buildings. However, existing state law exempts accessibility standards for multistory dwelling units (townhouse-type) in covered multifamily buildings without an elevator. Current federal law permits the exemption of accessibility requirements in townhouse-type dwellings constructed in covered multifamily buildings without an elevator.

Additionally, current state law requires the building department of every city and county to enforce regulations published in the California Building Standards Code, as well as other rules and regulations promulgated by HCD.

Further, Ch. 642, Stats. of 2003 (SB 1025) was signed in October, 2003 and became effective on January 1, 2004 although, by its own terms, the provisions of the law become operative on July 1, 2005. SB 1025 changes the definition of discrimination to include prescribed requirements relating to multistory dwelling units (townhouse-type) in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units,

Summary of Existing Regulations

Existing regulations pertaining to this regulatory action are contained in the 2001 California Building Code (California Code of Regulations, Title 24, Part 2). The regulations being modified by this action are contained in Chapter 11A which governs "Housing Accessibility". Current regulations specifically exempt townhouse-type

construction in covered multifamily buildings (those without elevators) from building standards for persons with disabilities. This is consistent with state and federal laws. Additionally, emergency building standards adopted to implement the provisions of Ch. 642, Stats. of 2003 (SB 1025) were approved by the California Building Standards Commission and filed with the Secretary of State on May 19, 2005 to become effective on July 1, 2005.

Summary of Effect

This regulatory action makes some of the more critically needed updates to California standards pertaining to disabled access in specified residential dwellings. Specifically, this action will clarify the provisions of Ch. 642, Stats. of 2003 (SB 1025) to require that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) is subject to building standards for persons with disabilities. These provisions apply only to the primary entry level of the unit. Because the provisions of Ch. 642, Stats. of 2003 (SB 1025) become effective on July 1, 2005, these regulations will clarify the requirements of the new law for the affected public as of that date.

NOTE: Because “Carriage units” are not defined in current building standards, but are exempted in both federal law and regulations (see Attachment A - Letter from U.S. Department of Housing and Urban Development), as well as state law by its cross-reference to these federal provisions. Therefore, a definition is proposed for inclusion within these amendments. This definition is necessary to clarify the scope of the proposed building standards and address inherent confusion between the terms “carriage unit” and “townhouse-type construction”.

Comparable Federal Statutes or Regulations

The Fair Housing Amendments Act of 1988 (42 USC 36901, *et seq.*) contains comparable accessibility standards. Federal statutes and regulations (24 CFR Ch 1, Subchapter A, Appendix II) specifically exempt townhouse-type construction in covered multifamily buildings (those without elevators) from building standards for persons with disabilities.

These proposed state building standards, as intended by Ch. 642, Stats. of 2003 (SB 1025), will exceed federal statutes and regulations by requiring that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) in California is subject to building standards for persons with disabilities.

NOTE: “Carriage units” are exempted by both federal law and regulations (see Attachment A - Letter from U.S. Department of Housing and Urban Development).

Policy Statement Overview

The broad objective of these proposed regulations is to comply with the intent of

Ch. 642, Stats. of 2003 (SB 1025) which revised Government Code Section 12955.1, and added Government Code Section 12955.1.1, as follows:

- This bill redefined “discrimination” to include accessibility requirements for certain types of townhouse-type construction in covered multifamily buildings—those without elevators. These types of buildings had previously been exempted from both state and federal laws from building standard design requirements for access for persons with disabilities. However, the bill did not provide clarity as to which buildings are subject to the new requirements nor the standards themselves.
- This bill did not include clear enforcement authority for these new provisions for local building officials, although these officials have the duty to enforce other provisions of federal and state laws governing disabled access provisions in building standards.
- The provisions of this bill are to become operative on July 1, 2005.

Therefore, the specific objectives of these proposed regulations are to:

- Specify exactly which buildings and dwelling units are affected by this new law;
- Clarify enforcement for local building officials;
- Ensure that the affected public is provided with adequate information needed to comply with the requirements of Ch. 642, Stats. of 2003 (SB 1025).

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts; and therefore, does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **YES**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**

E. Cost or savings in federal funding to the state: **NO**

ESTIMATE: HCD believes that the additional expenditures will be minimal and will be able to be absorbed within existing budgets and resources.

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

HCD has determined there are minimal facts, evidence, documents, testimony, or other evidence upon which the agency relied to support its initial determination of no effect pursuant to Government Code Section 11346.5(a)(8). The public is welcome to submit any information, facts or documents either supporting HCD's initial determination or finding to the contrary.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

HCD has made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and has determined that a report pursuant to Government Code Section 11346.3(c) is not required.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

HCD has initially determined that a representative private person or business may be affected by these proposed regulations.

Estimate: The proposed regulatory changes have no cost impact beyond that imposed by the statute. The statutory change may impose costs on builders and developers involved with the construction of townhomes. The extent of these costs is dependent on the use and type of rooms or features which have been designed on the primary entry level of a townhouse. The cost of the statutory amendment is unknown because the application of the building code standards provides designers and builders specific requirements when designing and constructing townhouse-type dwellings in covered multifamily buildings without specifying particular methods of construction or materials. The regulations may mitigate costs by specifying the parameters of the statutory change.

Small Business Effect

This regulatory action may have an effect on small businesses as the standards contained

in this proposal will require designers and builders to include design specifications and materials in buildings that are currently exempt.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

HCD has initially assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.

- The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not affect the creation or the elimination of existing business within the State of California.

- The expansion of businesses currently doing business with the State of California.

These regulations will not affect the expansion of businesses currently doing business within the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

HCD has initially determined that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public review by contacting the person named below. This Notice, the Express Terms and Initial Statement of Reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding the procedural and administrative issues should be addressed to:

CBSC: Stan Nishimura, Executive Director
CBSC Back-up: If the contact person is unavailable, please contact Tom Morrison, Deputy Director, at the phone number or fax number provided below.
CBSC Address: California Building Standards Commission
2525 Natomas Park Drive, Suite 130,
Sacramento, CA 95833
CBSC Phone No: (916) 263-0916
CBSC FAX No: (916) 263-0959
CBSC E-mail: CBSC@dgs.ca.gov
CBSC Website: <http://www.bsc.ca.gov>

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards may be addressed to:

Dave Walls, State Housing Law Manager
Department of Housing and Community Development
Division of Codes and Standards
Telephone Number: (916) 445-9471
E-mail: dwalls@hcd.ca.gov
Fax: (916) 327-4712